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New England Society of Orange, N.J.

Utility franchise conditions

[Orange, N.J.]

[1914]

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UTILITY FRANCHISE CONDITIONS

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A Concise Statement of Facts Relating to the Proposed Franchise for a Railroad on

CENTRAL AVENUE, ORANGE.

SPECIAL COMMITTEE ON FRANCHISES,

FREDERICK W. KELSEY, Chairman.

WILLIAM DOWNS, HENRY T. STETSON,
THOMAS C. COLT, CHARLES T. GWYNNE,
Secretary

The New England Society of Orange

"The streets of a city are not the property of a single generation which it has the right to barter or give away without limit. A franchise is justifiable only for so long a time as it inures to the public benefit, and every generation and age should have the power, so far as possible, to work out its own destiny unhindered by limitations unwisely imposed by previous generations."

MILO R. MALTBIE.

UTILITY FRANCHISE CONDITIONS.

In the granting of a franchise or contract for the use of the public streets there are four fundamental factors affecting all the people of the city.

FIRST.—Adequate Service.

SECOND.—Municipal control to insure such service.

THIRD.—Compensation to the City proportionate to the increasing profits of the undertaking.

FOURTH.—A limit of time for which the privilege is granted in order that the City's interests and share in the accruing profits may be readjusted under the changed conditions constantly occurring.

These elemental factors are recognized as having binding force by all franchise experts and are clearly demonstrated by the practical experience of hundreds of cities in the determination of this question. The time for adopting a franchise as prepared by the Company or those who seek it, is past. At this stage of public enlightment the iniquity of a long term or perpetual franchise without the above factors being made a condition of a grant for the use of the public streets is self evident, and so plain that he who runs may read.

The modern franchise is very properly a subject for criticism and of the fullest publicity. Every thoughtful person recognizes that transportation facilities are vital to the life and growth of the community. Conversely, to give away for generations public property—the use of the streets—without an adequate and just return for the privilege and without requisite regulation of the service is an irretrievable wrong. This result is possible only, from a lack of knowledge or from the various influences which have become the bane of municipal administration in the granting of public franchises in American Cities.

Applying these principles directly to the Central Avenue ordinance, consider briefly and seratum the points above indicated.

I. ADEQUATE SERVICE.

The statement has been frequently made and reiterated in the press, that "the changes suggested by the citizens at a recent public meeting excepting the one fixing compensation to the City were incorporated in this ordinance." This is wholly misleading. At the meetings of the Railroad Committee, and before the Common Council, Novem-

ber 28th last, in announcing that we all favored the extension of the road on Central Avenue, we not only made specific recommendations not mentioned in this ordinance but placed at the Committees' and Councils' disposal any of the model ordinances, or facts in our possession which might be desired in determining this question. The answer was a secret conference between the then Common Council and the railroad officials December 15th, and the declination to admit those who called at the Committee room when the members of the Council were again conferring with the Public Service representatives April 20th.

The following points which we had earnestly suggested should be included in any ordinance granted by the City are not even referred to in the "ten minute" ordinance now on second reading,—

a. A system of accounting to the City.

b. A stipulation as to the kind of poles, whether "100 poles" are to be the unsightly wooden brand or suitable iron poles.

c. A provision in future for the placing "whenever the public convenience requires" the overhead construction underground.

d. Limitation of one fare "to any part of the Oranges and Newark."

e. Freight Cars not to be operated without consent of the City.

f. A provision for safety devices.

g. Adequate provision for city regulation of the service to be performed.

h. A provision for allowing any other company than the Mountain Railway the use of the tracks.

i. Some provision for disposition of property, fixtures and appurtenances constituting the railway and appliances at the expiration of the franchise term.

j. A provision for division with the City of net profits or minimum amount of payment annually for the franchise.

It is superfluous to add that most or all of these conditions are now included in all up to date street railway franchises where prepared and granted in the public interest, at the same time full protection and fair return is given private capital invested in the construction and operation of the road.

It should be borne in mind that a Utility franchise, transfers from public to private control and operation the most valuable use of a street; and that when a right of way is all made and graded as with a finished avenue or street at public expense—that right of way in growing urban communities *is far the most valuable part of the capital cost required for the road or for its extension.* In many cases this right of way or franchise is worth in actual cash value very many times more than the total cost of construction, equipment and liberal allowance for amortization combined.

II. MUNICIPAL CONTROL TO INSURE ADEQUATE SERVICE.

If the experience with street railway management in this country is conclusive on any one point, it is on the imperative need of this provision as a condition of the franchise. Good service is as fundamental a requirement as is the matter of fair compensation to the City. The Public Utilities Board may or may not require this. Provided for in the franchise it becomes automatic in its application. Where city charters do not specify suitable control, all modern Utility franchises, such as those now in force in Chicago, Cleveland, Kansas City, Grand Rapids, Nashville, and many other places make specific provisions in the ordinance for it.

The experience of this City with the Cross-town line is an illuminating object lesson on this point. But seven years ago, the Common Council passed to final reading an ordinance revoking that franchise on account of the execrable service of that road. It is now, as every one knows who uses the line, very defective in service. The City is equally helpless in the overcrowding, irregularity and otherwise poor service of the Main Street line. Is it the part of official wisdom or safe business policy to keep right on in creating new franchises of helplessness as in the present ordinance?

III. COMPENSATION TO THE CITY.

It is doubtful if any one cause for the loss of public confidence in the management of American Cities has been so potential as the disposition of the profits; and the conditions incident to the granting of public franchises. From the days of the Broadway Franchise exploitations in New York many years ago, to similar exposures in St. Louis, San Francisco, Grand Rapids, and elsewhere the public have

learned from sad experience lessons that point to the necessity for providing a fair return to the City in the terms of any franchise granted for use of the streets.

We can here refer but briefly to some of the salient facts indicating the demonstrated value of street railway franchises and the reasons why we deem the ordinance under consideration wholly defective in this respect.

Sheffield, England, on an average two cent fare, provides excellent service for 100,000,000 passengers annually, with a net revenue last year of $764,000, and since 1899 taxes from this source have been reduced there more than $2,000,000.

Toronto, Canada, after allowing two per cent. quarterly dividends on the Street Railway Company's capital stock and enough for excellent service under City control, received for the franchises there for 1912, $942,048.96 and the amount is rapidly increasing each year.

Chicago, under the ordinance of 1907 for all the street railways there, receives 55 per cent. of the net earnings plus $51.50 per month as right of way for each mile of double track, provisions for the best of service, allows the companies 7 per cent dividends on capital stock and adequate provisions for track extension. The City's receipts the first year, 1908, were $1,564,618, and for 1913 had increased to $3,299,000. This "traction fund" now in that City's Treasury is about $14,000,000.

Cleveland on a three cent fare has universal transfers, the best of service and efficient municipal control.

Baltimore supports her great park system on its share of receipts from the trolley companies amounting to about $600,000 annually.

Kansas City on a twenty year franchise receives a liberal percentage of the traction company's receipts, guaranteed to be not less than $50,000 per year.

New York; the assessed valuation of Franchises as filed by the State Board of Tax Commissioners with the City Tax Department for 1912 was $413,000,000.

In New Jersey, the interest bearing capitalization in Bonds and Dividend payments on stock, averages on every mile of the 390 miles of double track in the State, more than $350,000 per mile and in "northern Jersey" the lines of the Public Service in Essex and Hudson, over $400,000 per mile.

The South Orange Avenue line (a parallel road to Central

Avenue) was sold to a syndicate about thirty-five years ago for less than $100,000. When it was electrified and extended a few years afterward, it was capitalized for $3,000,000—$1,500,000 5 per cent. Bonds and $1,500,000 stock.

In 1898 the same syndicate organized the North Jersey Street Railway Company, and as owners of the stock of both companies issued practically to themselves on a 999 year lease of the South Orange Avenue line $6,400,000 of 4 per cent. Bonds plus $15,000,000 North Jersey Company stock.

In 1903 the Public Service Corporation was organized by the same men or "syndicate," the interest on the $6,400,000 Bonds was guaranteed and the $15,000,000 North Jersey Company stock converted on the basis of 40 per cent into $6,000,000 interest bearing Public Service Certificates, now paying 6 per cent interest and to continue at that rate for the next 988 years.

These securities have a market value to-day of more than $11,000,000 and provide a yearly income to the owners of $616,000. Yet the municipalities receive but a mere bagatelle from that line, merely the compulsory 5 per cent on gross receipts under the Voorhees' Act.

The "Cross-town" line—the Orange and Palisades Valley Railway Co.—has had outstanding on its franchise and equipment now for fifteen years $833,000 of 5 per cent Bonds, market value at 90—$749,700 and now also $300,000 Public Service 6 per cent certificates, at 105—$315,000—a total present market or selling value on this single track "one horse" road of $1,064,700. As the line has but about 10 miles of track including turn outs, sidings, etc., with no populous terminals and cost but about thirty thousand dollars per mile to construct and equip, *the profit in the franchise and ridiculously insignificant revenue the City has since and now receives are apparent.*

Compare also this question of approximate street franchise value on the basis of earnings.

According to the City Comptroller's reports, Orange, from the Main Street line, is now receiving under the 5 per cent. on-gross-receipts law (year 1912), $2,976.45; while the Company's "share" for the same year was $59,529. From the Cross-town line in Orange for 1911 and 1912 each year but $2,079.62, the Company's "portion" being $41,592.40.

In East Orange (1912) the City received under the same law for the Main Street and Central Avenue lines $9,907.01 against $198,142 receipts by the trolley company for the same year.

The manifest absurdity of a long term franchise, like 50 years, without a fair and increasing revenue to the City is also shown by the innumerable evidences of the growth of the business and profits of all street car lines located in growing communities. This increase or increment, increases from a minimum of 4 per cent. or 5 per cent. to a maximum of 40 per cent. or 50 per cent. *annually.*

In Queens Borough in fifteen years, 1898 to 1913, the increase was 421 per cent. In Rochester, Ind., the net earnings including heat and power electric service for 1913 increased over the previous year 35 per cent. The Utah Railway and Light Company's net earnings for the year to December 1st, 1913, increased 25 per cent. The net earnings of the American Power and Light Co. for 1913 gained 9 per cent. over 1912. The operating revenue of the Interborough Rapid Transit Co., Manhattan, increased 100 per cent from $16,837,370 in 1905, to $32,497,870 in 1913. And the rate of dividends increased from 5 per cent. in 1904 to 12 per cent. in 1913.

Coming closer home the Fourth Annual Report of the Public Service Corporation (page 7) gives the percentage of increase of the Railway Company over the previous year as 4 35/100 per cent.—explaining this "small increase"—and on page 28 states that the earnings from the trolley lines increased from $8,415,278 in 1904 to $15,262,426 for 1912; or approximately *90 per cent in the eight years.*

These percentages grow steadily and rapidly with the growth of population. In New York the Railway and Electric Companies' average increase is 17 per cent. In Chicago, 48 per cent. In San Diego, 59 per cent. These wonderful results and rapid development are the natural sequence of urban and suburban growth.

Fifty years ago Newark had a population of but 70,000. The Morris and Essex "horse car line" was opened in 1836. The first locomotive began running there in 1837. The first stage line between Orange and Newark was not started until 1858. It was not until 1862 that the street horse car line via Main Street, Bank and Warren Streets was opened; and 30 years later, 1892, that the trolley cars were first in operation. The marvelous traction developments from that year, and the many millions of profits to the Companies made out of franchise capitalization in the 32 years since, tell their own story.

These facts demonstrate more clearly than words the unthinkable folly—or worse—of granting any kind of a franchise without fair return and *increasing revenue based on the increasing value and rapidly growing*

profits of the enterprise. In the franchise under consideration the City is bound hand and foot for two and a half generations; and this with the possibility in all human probability that the Central Avenue line will soon become, like Main Street and the South Orange Avenue lines, one of the best trunk line traction propositions for rapid development and rapidly increasing profits in the country.

IV. THE LIMIT OF TIME FOR WHICH SUCH A FRANCHISE SHOULD BE GRANTED.

The monstrous wrongs growing out of franchise granting in perpetuity and for long periods of time on the Company's own terms, has led to drastic legislation in many of the States. By the Constitutional Amendment adopted in 1870 and the laws of 1872 no utility franchise can be granted in Illinois "for a longer term than 20 years," and in 1875 this restriction was inserted in the City Charter by popular vote. It was the expiration of these short term franchises that enabled the City to enact the ordinance in 1907 securing 55 per cent. of the net earnings of all the surface trolley lines there, and brought about a new era of franchise granting in the United States.

In Michigan all franchises are limited by law to 30 years. Perpetual franchises have been by the highest courts of that state declared void. The expiration of franchises in Detroit gives that City now the opportunity that Cleveland, Chicago, Toledo and many other places possess of making just and equitable terms with the Traction Companies. In Columbus, Ohio, all 25 year franchises expire in 1917.

In Iowa, a 25 year franchise limit is supplemented by a referendum applicable to each city.

Under the limited franchise law in Colorado, Denver in 1906 granted a 20 year franchise, the Company to pay the City $60,000 annually in equal ($5,000) monthly installments. Other States, and approved Municipal Charters provide for strict restriction as to the time franchises may be granted.

Notwithstanding these 20 and 25 year limited franchise periods, trolley line construction has gone forward with prodigious strides in all these States—Illinois, Ohio, Indiana, Michigan, even Colorado: This fact effectually disproving the assertion that a franchise term longer than 20 or 25 years as in those States debars or even retards transportation development. This is so, for the reason that under a franchise time limit it is merely the *privilege* that expires. The opera-

tion of the road and public convenience invariably and always continues, but under new conditions as then agreed upon. This is the universal experience and the arrogant demand for "50 years or nothing" is therefore pure and gratuitous assumption.

The best franchise experts, men of national reputation and standing, such as Milo R. Maltbie, Public Service Commissioner of New York, and Delos F. Wilcox, emphatically disfavor any fixed time for franchise grants whatever. They recommend instead the indeterminate franchise. This form of grant gives the City full control of service, an equitable share in the value and increasing profits, allows fair interest and returns on all private capital invested, yet insures the best of service and includes conditions under which the City may at any time under those terms acquire the property on conditions fair alike to the City and to the Company.

In conclusion; we have not consulted experts. We have not been asked by the Railroad Committee or by the Common Council for either suggestions or assistance in the preparation of this or the preceding ordinance, and, we have no desire to intrude on the manifestly hasty deliberations in disposing of this franchise.

We are, however, of one mind in the conviction that the line on Central Avenue should be extended; that we will as before indicated co-operate with the City authorities in securing that result and in obtaining something like just terms for our City; that the ordinance under consideration in its present form is entirely inadequate and from the view point of the public interest wholly indefensible.

As the Company in any event should be compelled to repave the Avenue, *this ordinance does not provide for a dollar of compensation for the franchise, as the insignificant payments named in this proposed fifty year munificent gift to the company are all compulsory by law.*

We have given this data as above so that the Mayor and Common Council and the people of the City may have the same indisputable facts in determining this question that we have had before us in forming our conclusions as here stated.

Orange, N. J., May Second, 1914.

"In my judgment the intimate control of the street railway service demanded by modern conditions can be made most effective by the inclusion in the franchise contract of certain definite requirements in regard to the disposition of revenues."

"As a tentative basis for the division of net profits, I would suggest that fifty per cent. be assigned to the city to be used as I have already indicated; twenty-five per cent. be turned over to the company as an additional return upon investment, and twenty-five per cent. be turned into an employee's benefit fund."

DELOS F. WILCOX.

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